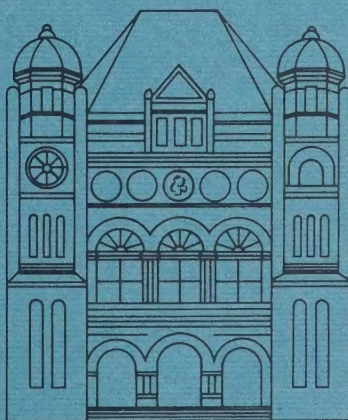
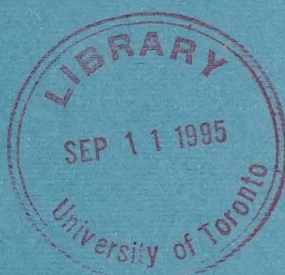


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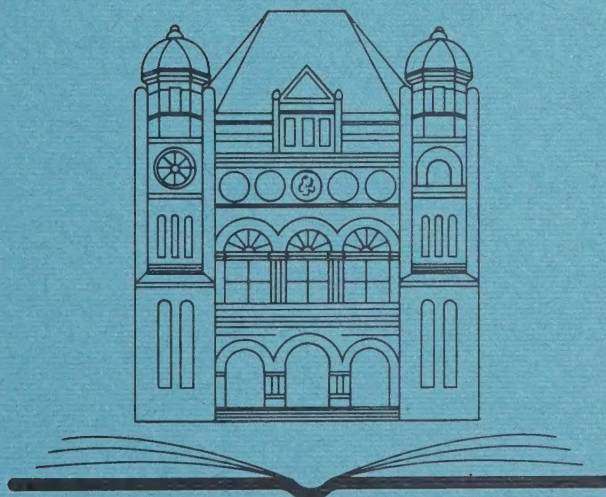
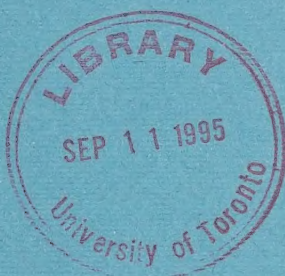
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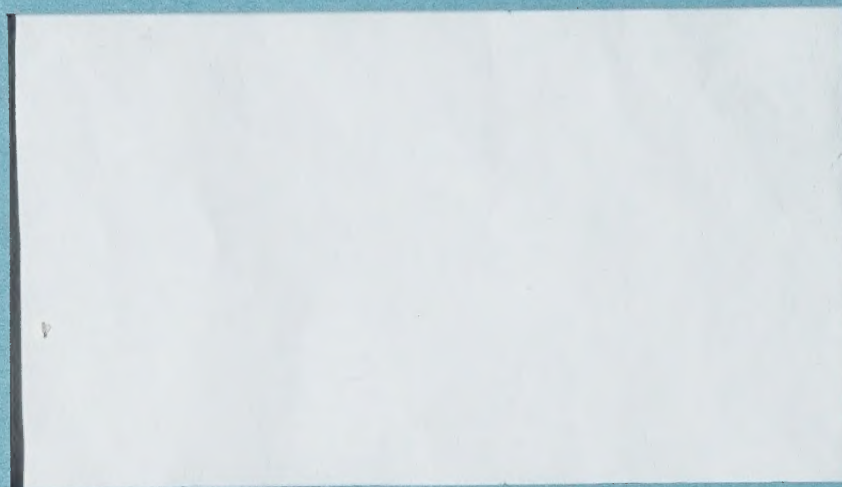
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ISSN 0835-0299

**CONSTITUTIONAL POSITIONS OF
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Current Issue Paper 126

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Original March 1992
Revised October 1992

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INTRODUCTION

When Elijah Harper was credited by the media for the defeat of the Meech Lake Accord, Aboriginal constitutional issues became as visible as Quebec's concerns. The failure of the conferences held between 1983 and 1987 to entrench self-government in the Constitution had not achieved this visibility; neither had the impressive lobbying efforts of the Aboriginal organizations when they managed to receive important recognitions in the *Constitution Act, 1982*. However, since 1990 there has been a general agreement that Aboriginal concerns are one of the two or three issues which must be dealt with in the current round of constitutional negotiations. This public agreement was reflected in the federal government's constitutional proposals of September 1991, more strongly in the February 1992 report of the Special Joint Committee on a Renewed Canada (the Beaudoin-Dobbie committee), and have seen an impressive culmination in the Consensus Report on the Constitution, to be voted on in a national referendum October 26, 1992. This Current Issue Paper examines the consultation process and key reports that led up to this juncture.

Federal Proposals

The federal paper *Shaping Canada's Future Together*, released in September 1991, made a number of proposals on Aboriginal constitutional issues, placing them immediately after the discussion of Quebec's distinctiveness.

- It proposed an amendment to the Constitution to entrench a general justiciable right to Aboriginal self-government within the Canadian federation and subject to the *Canadian Charter of Rights and Freedoms*. To permit the relevant parties to come to a common understanding of the content of this right, its enforceability would be delayed for a period of up to ten years.
- It proposed the entrenchment of a constitutional process to address Aboriginal matters that are not dealt with in the current constitutional deliberations and to monitor progress made in the negotiations of self-government agreements.
- It proposed that Aboriginal representation be guaranteed in a reformed Senate.

- It also proposed that the Canada Clause should recognize that the Aboriginal people of Canada were historically self-governing, and recognize their rights in Canada.

Processes of Consultation

In July 1991, the Assembly of First Nations (hereafter the AFN) and the Minister for Constitutional Affairs agreed that consultation with the status Indian people of Canada on constitutional change would be conducted by the AFN as a "parallel process" to the consultation with other Canadians conducted by the Special Joint Committee on a Renewed Canada. While there seems to have been some understanding on the Minister's part that there would be a unified consultation process by all Aboriginal groups, it was soon decided that each of the four organizations would conduct their own process.¹

The relevant recommendations of the Beaudoin-Dobbie committee are summarized later in this paper. Recommendations of the many provincial and other consultation processes, on Aboriginal matters as well as other key issues, are summarized in Current Issue Paper #122, *A Comparative Summary of Key Constitutional Documents, Reports and Proposals*, by Ted Wakefield.

ASSEMBLY OF FIRST NATIONS

This group is the largest and most visible of the national Aboriginal organizations, representing Canada's 500,000 "status Indians" (i.e., those individuals recognized by the federal government under the *Indian Act*). The AFN is composed of Chiefs of bands across the country who elect a Grand Chief as spokesperson for all First Nations people; there are also strong provincial organizations of Chiefs, who have their own spokespeople who make AFN policy on provincial or regional issues. Current Grand Chief Ovide Mercredi was elected in the summer of 1991. Because of the composition of the voting membership, the AFN is strongly tied to the reserve system; while the Assembly also represents status Indians who live off their home reserves, it considers outreach necessary to consult with this group.

Consultations

The AFN established the First Nations Circle on the Constitution soon after the July 1991 agreement described above. It held hearings from October 1991 to March 1992, chaired by Konrad Sioui, of the Quebec Assembly of First Nations. A series of over 60 meetings were held across the country. Four "constituent assemblies" to consult with Elders, youth, women, and urban Aboriginal people were also held in January to March 1991: the consultation with women in Toronto, with urban First Nations people in Saskatoon, with youth in Winnipeg, and with Elders in Morley, Alberta.² The Circle also gave an educational briefing to the Parliamentary Committee and held joint hearings with them, under an agreement reached in November. Its report was released in April 1992 and recommended, among other matters raised in the consultations, that:

- the First Nations' inherent right to self-government, and status as "separate and distinct societies" be recognized in the Constitution;
- the Aboriginal level of government be recognized as equal with federal and provincial levels;
- First Nations' languages become official languages of Canada, and Aboriginal language and culture be protected in the Constitution;
- Aboriginal justice systems should be established and Aboriginal lawyers should be appointed to the Bench, up to and including the Supreme Court;
- treaties should no longer be interpreted "unilaterally," and oral traditions should be included for purposes of interpretation;
- "no megaprojects should be constructed in northern Quebec without the full consent of First Nations;"
- the word "existing" should be removed from s. 35 of the *Constitution Act, 1982*;
- the *Canadian Charter of Rights and Freedoms* should not override Aboriginal law, but gender equality should be entrenched in Aboriginal Charters; and
- treaty rights and services to Aboriginal people should be available without regard to residence.³

A resolution by the AFN's member Chiefs in conference made it possible for the leadership of the AFN to meet with the First Ministers using the report as a basis for negotiation rather than a binding agenda.⁴

Positions

The main lines of policy followed by the AFN became clear very shortly after the release of *Shaping Canada's Future Together*, and continued to develop, with the release of the Circle's report and the process of negotiations.

- The first and most important position has been that the constitution should recognize the inherent right to self-government of Aboriginal people.
- The second major position is that this right should be recognized immediately, with details to be worked out in negotiations on a local basis; that is, that the ten-year delay on justiciability proposed by the federal government is unacceptable.

Other positions taken by the AFN included:

- There is some discomfort with the idea that the *Canadian Charter of Rights and Freedoms*, which was not negotiated by Aboriginal governments, could limit the self-governing institutions which will be developed.⁵
- The Circle recommended that Aboriginal societies be described as "distinct" in the Constitution; however, this idea is not universally approved, and was ultimately abandoned in negotiations.⁶
- In a related matter, the AFN wished to have a description of self-government as "safeguarding...culture..." and "maintaining and strengthening" their land and resource base."⁷
- The Grand Chief has endorsed the constitutional recognition of Quebec as a distinct society.⁸ However, the AFN hoped to clarify that recognition of Quebec as a distinct society will not threaten the rights of Aboriginal people in that province.⁹
- Both the Circle and public statements by AFN leadership have been concerned that the rights of Aboriginal peoples and an Aboriginal level of government not be threatened by any rearrangements in the division of powers between the federal and provincial levels.¹⁰

Within the AFN, some First Nations that have signed treaties have expressed concern that nation-to-nation treaty negotiation is a more appropriate forum than the multilateral constitutional negotiations the AFN has been participating in. These First Nations fear that self-government agreements under the Constitution could threaten treaty rights.¹¹ In September 1992, First Nations in Treaty 7, which covers parts of Alberta and Saskatchewan, announced that they would not support the August constitutional agreement and were withdrawing from the AFN.¹²

INUIT TAPIRISAT OF CANADA

This organization represents the most geographically and socially unified of the Aboriginal groups recognized in the Canadian Constitution, the Inuit. The position of the Inuit is particularly strong in the present process because of the recent progress on negotiations to divide the Northwest Territories; Nunavut, the Eastern Arctic, will essentially be an Inuit-governed territory, as is the Kativik regional government in Northern Quebec, established under the James Bay and Northern Quebec Agreement. So self-government, the goal of other Aboriginal peoples, is essentially within the grasp of most of the Inuit of Canada. From this advantageous position, the Inuit Tapirisat of Canada (hereafter ITC) has strongly supported the position of other Aboriginal organizations.

Consultations

The ITC consultation process was more regionalized than that of the AFN. The four regions of the ITC - Inuvialuit (Western Arctic), the Tungavik Federation of Nunavut land claim area (Eastern Arctic), Nunavik (Northern Quebec Agreement area), and Labrador - as well as the women's section of the organization held workshops and consultations.

Even before the consultations took place, however, the guiding principles of the ITC on the Constitution had been stated by Rosemarie Kuptana at the Premiers' Conference in Whistler B.C., in August 1991:

- aboriginal peoples must receive constitutional recognition as distinct societies and be given equal stature to other groups of peoples recognized as distinct societies;
- the next constitutional accord must include a provision recognizing the inherent right of Aboriginal peoples to self-government; and
- there must be a constitutional provision ensuring direct representation of Aboriginal peoples in the constitutional reform process.¹³

Position on Federal Proposals

The ITC constitutional position paper, "Inuit in Canada: Striving for Equality," was presented to the Beaudoin-Dobbie committee after the Inuit consultation process was complete. The three guiding principles stated in August had changed slightly in emphasis and wording, with entrenchment of the inherent right to self-government placed first, and the principle of representation specified as applying to "all First Ministers' Conferences and other federal-provincial processes on the constitution, economy and other fundamental matters."

The ITC also responded specifically to the September 1991 federal proposals as follows:

- The Inuit of each region will decide the form of self-government for themselves and will negotiate agreements with other levels of government. These agreements will likely address protection and enhancement of Inuktitut (the major Inuit language), protection of the environment and management of resources, and circumpolar exchanges with Inuit in other countries. A non-ethnic government reflecting the values of the majority (Inuit) culture can probably meet the needs of the Inuit in the Arctic, but this decision will be made regionally.
- Self-government agreements must be constitutionally protected as "treaties" within the meaning of s. 35(1) of the *Constitution Act, 1982*.
- The federal proposals should recognize the inherent right to self-government and should drop the ten-year enforceability provision.
- The Inuit affirm that the inherent right to self-government must be entrenched within the constitutional framework of Canada. They willing to consider the

application of the *Charter of Rights and Freedoms* to negotiated self-government arrangements.

- Aboriginal peoples should be recognized as distinct societies in any Canada Clause and in Part II of the Constitution. Section 25 of the *Constitution Act, 1982* should be expanded to ensure that the interpretation of the *Charter of Rights and Freedoms* does not abrogate or derogate from the rights of Aboriginal peoples by reason of the proposed s. 25.1.
- A general right of representatives of Aboriginal peoples to attend all First Ministers' Conferences should be included in the Constitution; a series of regular First Ministers' Conferences on Aboriginal issues should be specified in the Constitution; and the Constitution should be amended to require Aboriginal consent to any proposals to amend s. 91(24) of the *Constitution Act, 1867*, s. 25 of the *Canadian Charter of Rights and Freedoms*, or Part II of the *Constitution Act, 1982*.
- The ITC supports a constitutionally entrenched social charter, in the form of a general clause requiring governments to protect and promote equal access to adequate health care, education, education, housing, income security and a safe and healthy environment. Section 6 of the Charter and s. 36 of the *Constitution Act, 1982* should be expanded for the same purposes.
- The Constitution should be amended to return to the situation of the *Constitution Act, 1871*, under which a new province could be created with the consent of the affected Territory and the Parliament of Canada.
- Proposals for devolution of federal powers should recognize the concerns of Aboriginal peoples as they negotiate self-government; Aboriginal representatives must be included in discussions involving law-making powers, decentralization and devolution, and Aboriginal consent should be required in certain areas.
- The September 1991 federal proposal for bilateral legislative and administrative delegation of powers was not acceptable to the Inuit.
- The ITC also opposed the dilution of federal financial powers in the area of social programs and the weakening of federal government authority to introduce new social programs. The proposed new s. 121 is also of some concern; land claims rights of Aboriginal peoples should be stated as a specific exception, and Inuit economic development policies should be accommodated.

METIS NATIONAL COUNCIL

The Métis National Council is a Prairie-based organization, which also has regional organizations in Ontario, British Columbia, and parts of the Northwest Territories. It represents the descendants of people of mixed Aboriginal and European ancestry who developed a culture and economy distinct from either the European or earlier Aboriginal groups.

Positions

The Métis National Council (hereafter the MNC) appeared before the Special Joint Committee on three occasions. On the second occasion it was conducting a joint hearing with the Committee, and made no specific recommendations. On the first occasion the MNC established the major issues for the Metis: land and resource rights and self-governing rights. With the exception of the legally established settlements in Alberta, the Metis have no land base. Also, the federal government has never acknowledged a special relationship under the provisions of s. 91(24) of the *Constitution Act, 1867*; although the Inuit were found to be "Indians" within the meaning of that section, the federal government has never recognized a similar relationship with the Metis.

On their third appearance before the Committee, the Council made much more specific comments on the September 1991 federal proposals.¹⁴

- They expressed serious concern that the division of powers proposals do not take into consideration how these changes might affect the Metis, or how they affect the third, Aboriginal level of government.
- The federal government must recognize and assume its obligations towards the Metis under s. 91(24) of the *Constitution Act, 1867*.
- The inherent right to Aboriginal self-government should be explicitly recognized in s. 35 of the *Constitution Act, 1982*; the judicial enforcement of the right for a period of up to five years is acceptable, but agreements reached before that time must be entrenched immediately.

- A special tribunal should be established to resolve disputes among the three levels of government, with appeal from its decisions directly to the Supreme Court of Canada.
- An orderly process should be established whereby the other two levels of government could vacate areas of jurisdiction as Metis governments are able to take over their functions.
- The commitment to negotiate self-government agreements should be specifically entrenched in the Constitution.
- Guaranteed Senate seats for Metis districts, separate from any established for Indians and Inuit, should be established in each province and territory in the "Metis homeland."
- Metis participation in any continuing constitutional negotiations should be guaranteed.
- A process for dealing with Aboriginal constitutional issues not resolved in the current round should be established, with at least annual meetings and with full MNC involvement in the preparatory process and study of agendas.
- In the current round of negotiations, the MNC should be involved in preparation for further meetings, and the mandate of the Special Joint Committee should be extended to convene a meeting to discuss their report with the MNC.
- A bilateral process to agree upon the responsibilities of the federal government towards the Metis should be entrenched in the Constitution.
- The proposed language of the Canada Clause should not refer to Aboriginal self-government having been exercised in the past, but should strengthen the interpretation of the right. It should also recognize the contribution of the Metis Nation in bringing Manitoba into Confederation.
- The Special Joint Committee should recommend the establishment of a land base for the Metis.
- Territorial consent must be obtained before the extension of provincial boundaries, and the amending formula should be changed to allow the federal government alone to create new provinces.
- Quebec should be recognized as a distinct society, but there should be a specific clause in the Constitution which would state that this recognition should not abrogate or derogate from the Aboriginal, treaty or other rights and freedoms of the Aboriginal peoples of Canada.

NATIVE COUNCIL OF CANADA

This organization represents a very similar group as the Métis National Council, but has a wider range of membership, accepting all Canadians who identify themselves as being of Native blood. There is a significant group of people who lost their "Indian" status in the eyes of the federal government, particularly under the old provisions of the *Indian Act*. Though the overtly sexist provisions of the Act were changed in 1986 (previously men automatically conferred their status on their wives and children, while women lost theirs if they married a non-"Indian"), many people across Canada do not have "status" (are not recognized by the federal government as Indian) but think of themselves as Native people. However, not all of these people would describe themselves as Metis, a people culturally and historically tied to a particular culture on the Prairies. The Native Council of Canada (hereafter NCC) seeks to represent these people.

Consultations

The NCC's Constitutional Review Commission published a series of four working papers to establish points to be addressed by local consultations. The papers are entitled:

- *Aboriginal Directions for Coexistence in Canada;*
- *Treaties: A Route to Coexistence;*
- *Metis: Peoples and Nations;* and
- *Equity of Access: The Forgotten Majority Speaks.*

Positions

As with the other groups discussed, the Native Council of Canada has not released a definitive statement of its own constitutional position. The summary below is taken from the Council's appearance before the Special Joint Committee on a Renewed Canada, on February 11, 1992, unless otherwise noted.

- The major initiative being advocated by the NCC is a National Treaty of Reconciliation, on the model suggested by Premier Ghiz in December 1991, to be entrenched in s. 35 of the Constitution. The negotiation of this treaty would take place among the "three founding nations," represented by Canada, Quebec and Aboriginal groups.
- This statement would also be a means to entrench the idea that the consent of the Aboriginal peoples is necessary in order to amend the Constitution in areas that directly affect them. This form of entrenchment would be preferable to the ordinary constitutional amending process.
- The recognition of the inherent right to self-government addresses the "distinct" nature of Aboriginal societies; while that recognition is important, the exact wording is not of major importance for the NCC.
- The recognition of Aboriginal people in the Canada Clause should be strengthened from the wording in the September 1991 federal proposals; in particular, the reference to self-government in the past should be broadened to include self-government in the present.
- The major impetus for the changes in the *Indian Act* which have allowed many members to be reinstated was the existence of the Charter (as well as international condemnation). For this reason, local chapters, at least, are supportive of an Aboriginal Charter of Rights applying to Aboriginal governments.¹⁵
- Access to services is a major concern for off-reserve and non-status people. The federal government must recognize its responsibility for Aboriginal people under the Constitution and according to treaties. At the same time, negotiations on self-government in particular matters must take place with the most appropriate level of government, whether federal, provincial or local.
- The 10-year delay on justiciability was rejected.
- The recognition of Quebec as a distinct society was supported.

NATIVE WOMEN'S ASSOCIATION OF CANADA

NWAC appeared before the Special Joint Committee on a Renewed Canada in February 1992. The Association is not one of the four officially recognized Aboriginal representative organizations, but a national organization representing the concerns of Aboriginal women, mainly those living off reserves. NWAC recommended:

- The *Canadian Charter of Rights and Freedoms* should apply to Aboriginal governments. Specifically, the application of s. 2 and ss. 7 to 15 should be protected.
- Aboriginal governments should not have access to the override power under s. 33 of the Charter.
- The inherent right to Aboriginal self-government is an existing right under s. 35 of the *Constitution Act, 1982*, and should be recognized and affirmed by the federal government.
- During an extended negotiation period, NWAC should have an equal position with Aboriginal men in defining the powers and structure of Aboriginal self-government.
- In response to a question, a representative of the NWAC said that an Aboriginal Charter could be developed in s. 26 of the Constitution.
- A Metis woman speaking with the NWAC also expressed support for a Social Charter, but it was not clear whether she was speaking for the whole organization.¹⁶

Clearly there is some disagreement in both emphasis and content between this organization and the officially-recognized Aboriginal groups. However, NWAC had a perceptible influence on the recommendations of the Special Joint Committee.

Court Case

The disagreements over representation and substance finally led NWAC to launch a court case seeking a place at the constitutional negotiations. The group argued that their Charter rights to equality and freedom of speech were violated by the fact that the four officially-recognized groups received funding to participate in constitutional negotiations, while NWAC did not. The case, which asked that the \$10 million allocated to the four groups be divided with the NWAC, was heard in the Federal Court in March. The MNC, NCC, and ITC appeared in court to oppose the arguments of NWAC that women are not adequately represented by their organizations. Justice Walsh found against the NWAC.

On August 20, 1992, the Federal Court of Appeal unanimously agreed that NWAC had a right to take part in future constitutional negotiations; the federal government was required to pay costs in the original case and the appeal. Both parties to the case have until October 20, 1992 to appeal the case; neither has yet done so.¹⁷

In September, the NWAC launched another case in Federal Court challenging the October referendum - it has serious concerns over the proposal in the Charlottetown agreement that Aboriginal governments have the same powers as provincial governments to use s. 33 (the "notwithstanding clause") of the Charter. The Court ruled that the four recognized Aboriginal organizations could intervene. The case is scheduled to be heard on 13 and 14 October, 1992.¹⁸

APPROACHING CONSENSUS

Treaty Proposal

In January 1992 Premier Ghiz of Prince Edward Island proposed that the inherent right of self-government be recognized in the Constitution, and that the legal ramifications of this recognition be worked out within the context of a "National Treaty of Reconciliation." This would provide a constitutionally entrenched structure within which detailed arrangements on division of powers, provision of services and the economic basis for self-governing communities could be established.¹⁹ Premier Ghiz' proposal received praise from the AFN, the NCC, as noted above, and the AFN's Circle report.²⁰

Beaudoin-Dobbie Report

The report of the Special Joint Committee, released March 1, 1992, addressed a number of the issues raised by Aboriginal organizations. However, its mandate was to respond to the September 1991 federal proposals, and its recommendations reflect that mandate. The report recommended:

- the addition of a preamble and a Canada Clause to the Constitution; both would mention Aboriginal people, but not as a distinct society;
- entrenchment of an inherent Aboriginal right to self-government in s. 35 of the *Constitution Act, 1982*;
- entrenchment of a transition process to identify the responsibilities of Aboriginal governments and their relationship with other levels of government;
- the fundamental rights and freedoms of all Canadians, including the equality of the rights of men and women, ought to receive full constitutional protection;
- the federal government should respond to the representations of the Metis for access to a land and resource base;
- the continuing federal relationship with Aboriginal communities should be administered by a small bureau jointly administered by the federal government and Aboriginal representatives;
- any constitutional amendment directly affecting the Aboriginal peoples should require their consent; representatives of Aboriginal peoples should be invited to all constitutional conferences dealing with such matters; and the Constitution should provide for an Aboriginal constitutional conference within two years after the recommended amendment to s. 35 comes into force; and
- if they wish, Aboriginal peoples should receive guaranteed representation in a reformed Senate.

There were no dissenting opinions in the Aboriginal section of the report. However, a non-voting member of the Committee wished to insert a dissent recommending that Aboriginal people need protection if additional powers are transferred to the provinces, and that Aboriginal people should be exempted from the Charter when their own self-governing institutions are developed. Because of his status on the Committee the dissent was not included.²¹ The Métis National Council publicly expressed its disappointment that the Committee failed to recommend that the federal government recognize its responsibility for all Aboriginal people.²² However, Ovide Mercredi of the AFN called the report "a foundation for future discussions."²³

Negotiation Process

Aboriginal organizations participated and made important gains at meetings held by the federal government and the provincial governments other than Quebec, where an "offer" to that province was being developed. In April 1992, it was agreed that the Constitution would recognize an inherent right to self-government.²⁴ Other matters gradually resolved over the spring negotiations, which concluded July 7, included:

- amending the ten-year delay proposed in September 1991 to five years, before the right of self-government could be taken to the courts for interpretation;
- including a clause in the Constitution on interpreting treaties and treaty rights in a "just, broad and liberal manner;"
- specifying that Ottawa's responsibilities for Aboriginal people includes the Metis; and
- allowing off-reserve Aboriginal people to negotiate self-government agreements.²⁵

Consensus Report on the Constitution

Prime Minister Mulroney called a series of First Ministers' Conferences, including both Quebec and the four officially recognized groups, in August 1992. The agreement ultimately reached on August 28, 1992 embodies agreements reached by the 17 parties (federal, provincial and territorial governments and the four Aboriginal groups). For specific working, readers are referred to the text of the agreement itself. The summary below is intended to provide an overview of the scattered statements on Aboriginal issues. Relevant clauses (those with asterisks indicate that the general agreement will be negotiated in more detail) in the general sections of the *Consensus Report on the Constitution* include:

- recognition of Aboriginal peoples in the Canada Clause;*
- strengthening of s. 25 of the Charter, protecting Aboriginal rights and freedoms relating to the exercise or protection of their languages, cultures or traditions;

- a guarantee of Aboriginal representation in the Senate;*
- a commitment to further discussion of formal mechanisms for the representation of Aboriginal people on the Supreme Court;*
- a commitment that Parliament will pursue the question of Aboriginal representation in the House of Commons;*
- a commitment to invite Aboriginal representatives to participate in discussions of any item on the agenda of a First Ministers' Conference that directly affects Aboriginal people;*
- an assurance that Aboriginal governments will have access to the planned mechanism protecting intergovernmental agreements;*
- a general non-derogation clause ensuring that division of powers agreements will not affect the rights of Aboriginal peoples or the jurisdictions and powers of Aboriginal governments; and
- Aboriginal consent will be required to future constitutional amendments that directly refer to Aboriginal peoples; the mechanism to be agreed upon prior to introduction of resolutions in Parliament to amend the Constitution.

There is also an extensive section specifically addressing "First Peoples." In this the parties agree that:

- the inherent right of the Aboriginal peoples to self-government within Canada should be placed in a new section of the *Constitution Act, 1982*, s. 35.1(1);
- a contextual statement should be placed in the Constitution to read:
 - the exercise of the right of self-government includes the authority of the duly constituted legislative bodies of Aboriginal peoples, each within its own jurisdiction:
 - to safeguard and develop their languages, cultures, economies, identities, institutions and traditions; and
 - to develop and maintain and strengthen their relationship with their lands, waters and environment
 - so as to determine and control their development as peoples according to their own values and priorities and ensure the integrity of their societies;

- the justiciability of the inherent right of self-government should be delayed for five years through constitutional language and a political accord;*
- the issue of special courts or tribunals should be considered by the First Ministers;*
- the Charter will apply immediately to Aboriginal governments, who will have access to s. 33 under similar conditions as those applying to Parliament and the provincial legislatures;
- the specific constitutional provisions on land and self-government will not add to or derogate from existing Aboriginal or treaty rights to land;
- the federal and provincial governments and Aboriginal peoples commit themselves to negotiate self-government agreements;
- a political accord should be developed to guide this process; detailed guidelines for the elements of this accord and negotiations themselves are listed;*
- federal and provincial laws will continue to apply until they are displaced by laws passed by Aboriginal governments; these latter laws may not be inconsistent with laws essential to the peace, order and good government of Canada;
- the Constitution should be amended to provide a detailed context for the interpretation of treaties and treaty rights; this interpretation should be done in "a just, broad and liberal manner," should be undertaken in a joint process with the Government of Canada, which should have regard to the spirit and intent of the treaties, as understood by Aboriginal people, and shall not extend the authority of any government or legislature or affect the rights of Aboriginal peoples not party to the treaty concerned;
- all Aboriginal peoples have access to the Aboriginal and treaty rights that pertain to them;
- financing should be dealt with in a political accord among Aboriginal peoples and First Ministers;*
- the Constitution should allow Aboriginal governments to undertake affirmative action programs;
- section 35(4) of the *Constitution Act, 1982* should be retained and gender equality should be on the agenda of the First Ministers' Conference;*
- the Constitution should provide for four future First Ministers' Conferences on Aboriginal constitutional matters, to be held every two years starting no later than 1996;

- section 91(24) of the *Constitution Act, 1867* should be amended to ensure that it applies to all Aboriginal peoples* (negotiations will be held on protecting existing rights and resources under his clause);
- the Constitution should be amended to safeguard the legislative authority of the government of Alberta for Métis and Métis Settlement lands; and
- the federal government, the governments of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia and the Métis National Council agree to enter into a binding political accord on Métis Nation issues.*

Referendum and Future Negotiations

The referendum is to take place October 26, 1992. However, even if the Charlottetown Agreement is endorsed by this vote, further negotiations are inevitable. Readers will have noted the many listed clauses with asterisks, indicating that more negotiations are planned. Generally, the kind of negotiations are specified in the clause itself (First Ministers' Conference, consideration by Parliament, or Political Accord). Obviously the negotiations specifying powers and resources will be no less onerous than federal-provincial negotiations. However, the clauses that have received unanimous agreement -- recognition of the inherent right to self-government, a detailed context in which that right will be developed, the non-derogation clause, the treaty interpretation clause, and the recognition that s. 91(24) applies to all Aboriginal people -- provide a groundwork on which the actual structures of self-government can be securely built.

CONCLUSION

This paper has been updated to reflect the agreement reached by the Aboriginal organizations and the First Ministers, but the national referendum has not yet taken place. It is clear that the Aboriginal peoples have received much greater recognition from the Canadian state in that agreement than in any previous constitutional negotiations. If the agreement is ratified, the work of establishing self-governing institutions recognized by the Canadian Constitution can begin. However, even if the agreement fails, the ground gained cannot all be lost. A return to the status quo seems very unlikely; the recognition by governments of the inherent right of the

Aboriginal peoples of Canada to self-government is bound to eventually yield greater autonomy for the First Peoples of this country.

FOOTNOTES

¹ Patrick Angle, "Clark says natives distinctive," *Calgary Herald*, 8 July 1991, p. A1; "Clark, native leader at odds on reforms," *Calgary Herald*, 20 August 1991, p. A9.

² Telephone conversation with Bill Glaister, Assembly of First Nations, 16 March 1992.

³ All references to recommendations are from Assembly of First Nations, *To the Source* (Ottawa: The Assembly, 1992), pp. 23, 54, and 78-79.

⁴ Jack Aubry, "Mighty Mercredi," *Ottawa Citizen*, 24 April 1992.

⁵ Rudy Platiel, "Native women to challenge proposal on aboriginal rights," *Globe and Mail*, 17 January 1992, p. A5; Carol Goar, "Without Charter, native women lose battle for equality," *Toronto Star*, 28 April 1992.

⁶ "Mercredi draws fire from Native leaders," *Windspeaker*, 17 February 1992, p. 1; Susan Delacourt and Richard Mackie, "Compromise makes the day at unity talks," *Globe and Mail*, 28 May 1992.

⁷ Edison Stewart, "Unity talks 'on track,'" *Toronto Star*, 28 May 1992.

⁸ "Mercredi describes natives, Quebecers as natural allies," *Globe and Mail*, 17 October 1991, p. A13.

⁹ Susan Delacourt, "Report seen as minimum for unity deal," *Globe and Mail*, 3 March 1992.

¹⁰ Ibid.

¹¹ Glenna Hanley, "Self-government: looking at the big picture," *Windspeaker*, 13 April 1992, p. 7.

¹² Rudy Platiel, "Trudeau speaks," *Globe and Mail*, 30 September 1992, p. A7.

¹³ Inuit Tapirisat of Canada, "Background Notes to a Presentation by Rosemarie Kuptana, President of the Inuit Tapirisat of Canada" (32nd Premiers' Conference, Whistler B.C., 26 August 1991), p. 2.

¹⁴ The remainder of this section is taken from Canada, Parliament, Special Joint Committee on a Renewed Canada, "Proceedings" (11 February 1992): 65:4-20.

¹⁵ Cooper Langford, "Aboriginal charter of rights proposed," *Windspeaker*, 2 March 1992, p. 3.

¹⁶ Canada, Parliament, Special Joint Committee on a Renewed Canada, "Proceedings" (6 February 1992): 61:45-61.

¹⁷ Telephone interview with Theresa Nahanee, Native Women's Association of Canada, Ottawa, 6 October 1992.

¹⁸ Ibid.

¹⁹ Premier Joseph Ghiz, "Aboriginal Self-Government and the Canadian Constitution," Speech delivered at the Faculty of Law, University of Ottawa, 14 January 1992.

²⁰ William Walker, "National treaty with natives could ease impasse," *Toronto Star*, 15 January 1992; *To the Source*, p. 54..

²¹ Daniel Drolet, "NDPer accuses committee of muffling voices of dissent," *Ottawa Citizen*, 3 March 1992.

²² Darcy Henton, "Metis high hopes betrayed by unity plan, leader declares," *Toronto Star*, 3 March 1992.

²³ Ibid.

²⁴ Susan Delacourt, "Natives promised self-government," *Globe and Mail*, 10 April 1992.

²⁵ Edison Stewart, "Unity talks deadline extended," *Toronto Star*, 31 May 1992.



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